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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 LEGALFORCE RAPC WORLDWIDE,
16 P.C.,

17 Plaintiff,

18 v.

19 TRADEMARK ENGINE LLC;
20 TRAVIS CRABTREE; and DOES 1-50,
21 INCLUSIVE,

22 Defendants.

Case No.: 3:17-CV-07303-MMC

SECOND AMENDED COMPLAINT FOR:

1. DECLARATORY JUDGMENT, 28
U.S.C. § 2201;
2. FALSE OR MISLEADING ADVERTISING
15 U.S.C. § 1125(a);
3. UNFAIR COMPETITION, CAL. BUS. &
PROF. CODE § 17200, ET SEQ.

JURY TRIAL DEMANDED

1 1. LegalForce RAPC Worldwide, P.C. (“Plaintiff” or “RAPC”) complains and alleges
2 against defendant Trademark Engine LLC (“TE”) and defendant Travis Crabtree (“Crabtree”)
3 (collectively “Defendants”) as follows:

4 **NATURE OF ACTION**

5 2. RAPC brings this action to stop TE and Crabtree from misrepresenting the nature and
6 characteristics of its trademark services by false or misleading advertising, and from unfairly
7 competing with RAPC by providing the services unlawfully and unfairly. RAPC also brings this
8 action to recover losses caused by TE and Crabtree’s unlawful and unfair business practices.

9 3. RAPC and TE compete to provide individuals and small businesses with affordable
10 access to legal services that allow them to protect their marks through filings with the United
11 States Patent and Trademark Office (“USPTO”). Both use technology and innovation to provide
12 these services for hundreds of dollars instead of the thousands of dollars that traditional law
13 firms charge.

14 4. But while RAPC innovated within the existing legal framework that protects consumers
15 from getting bad legal advice, TE and Crabtree employ unscrupulous, unlawful and unfair
16 practices in its business. TE and Crabtree have gained substantial cost advantage over RAPC
17 because TE and Crabtree employ non-attorneys to provide legal advice to customers. RAPC
18 contends that TE and Crabtree’s entire trademark business is built upon the foundation of the
19 unauthorized practice of law.

20 **THE PARTIES**

21 **The Plaintiff**

22 5. RAPC is a law firm wholly owned by Raj Abhyanker, a member in good standing of the
23 State Bar of California, and the United States Patent Bar. The firm practices patent and
24 trademark law before the USPTO with a principal place of business located at 1580 W. El
25 Camino Real, Suite 10, Mountain View, CA 94040, and a law office located at 446 E. Southern
26 Ave, Tempe, AZ 85282.

27 **The Defendants**

28 6. Trademark Engine LLC is a Delaware corporation with a principal place of business at

1 12605 E. Freeway, Suite 540, Houston, TX 77014. It is not a law firm in the United States and
2 is not authorized to practice law in any state. TE operates website TrademarkEngine.com to
3 advertise, promote and provide trademark filing related services.

4 7. Travis Crabtree (“Crabtree”) is an attorney licensed in the state of Texas. He is a
5 co-founder, minority member and a managing member of Trademark Engine LLC. His principal
6 place of business is located at 12605 E. Freeway, Suite 540, Houston, TX 77014.

7 8. DOES 1-50 are entities that participated in the transactions complained of herein in
8 ways which are unknown to Plaintiff. The true names, capacities, nature, and extent of
9 participation in the alleged activities by DOES 1-50, inclusive, are unknown to Plaintiff and
10 therefore Plaintiff sues these defendants by such fictitious names. Plaintiff will amend the
11 complaint to allege their true names and capacities when ascertained.

12 **JURISDICTION AND VENUE**

13 **Subject Matter Jurisdiction**

14 9. This Court has subject matter jurisdiction under federal question (28 U.S.C. § 1331)
15 because Defendants violated the Lanham Act. This court has supplemental jurisdiction over the
16 California UCL claim under 28 U.S.C. § 1367 because the UCL claim arises from the same
17 nucleus of operative facts as the Lanham Act claim.

18 10. Alternatively, if this Court finds that it has no federal question jurisdiction over the
19 Lanham Act claim, Plaintiff requests this Court to exercise diversity jurisdiction (28 U.S.C. §
20 1332) over the California UCL claim because Plaintiff and Defendants are citizens of different
21 States and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest
22 and costs.

23 **Personal Jurisdiction**

24 11. This Court has specific personal jurisdiction over Defendants because they have
25 minimum contacts with the State of California. They purposefully directed their advertisements
26 or promotions at consumers in California. These activities are intentional acts expressly aimed
27 at California that are likely to cause harm in California. RAPC’s claims arose out of these
28 activities and exercising jurisdiction over Defendants would not be unreasonable. Moreover,

1 Defendants have waived their objections to personal jurisdiction. *See* Dkt. 41 at 2.

2 12. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b)
3 because a substantial part of the events or omissions giving rise to this action occurred in this
4 district. It is convenient for third-party witnesses to testify in this Court to prove the alleged
5 illegal activities of all defendants. Judges in this district are more familiar with California laws
6 than in judges in other states. In addition, California has a general policy interest in protecting
7 residents harmed by violations of California law by out-of-state actors such as Defendants.
8 Moreover, Defendants have waived their objections to improper venue by not raising the
9 objections in their first Rule 12 response. *See* Dkt. 41.

10 **FACTUAL ALLEGATIONS**

11 **I. TE's False And Misleading Statements**

12 13. The Lanham Act, 15 U.S.C. § 1125(a)(1)(B), prohibits any person from using false or
13 misleading statements to misrepresent the nature or qualities of his services in commercial
14 advertising or promotion. TE violated the Lanham Act by making the following false and/or
15 misleading statements on its website.

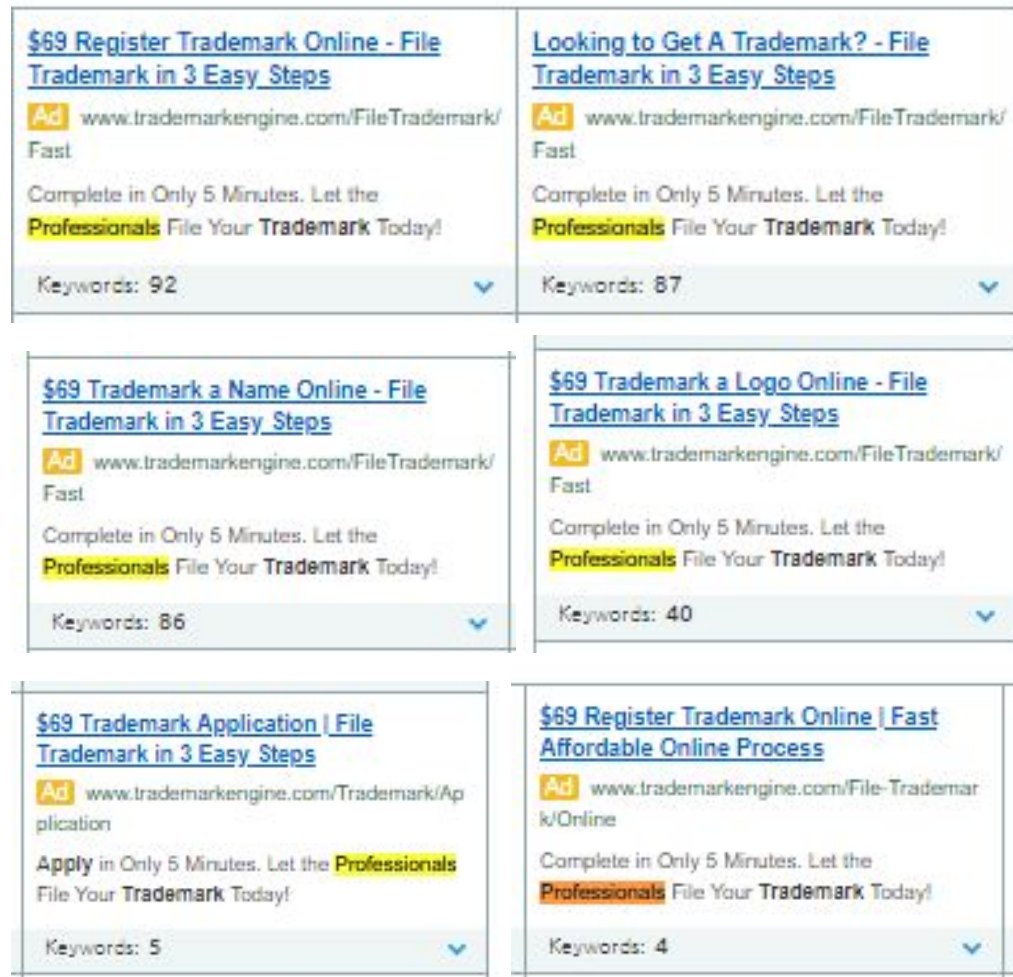
16 **A. Using the word “professional” to represent the nature of TE's services**

17 14. TE uses the word “professional” in at least two advertising statements to misrepresent
18 the nature and quality of its trademark filing services. Apparently, TE attempts to use
19 “professional” to represent that the service is provided by its staff who are “conforming to the
20 technical or ethical standards of a profession.”¹ As alleged in sections III and IV below, since
21 TE's trademark filing services are unlawful, using the word “professional” to represent the
22 nature of the services is both false and misleading.

23 15. **Statement #1:** “Let the Professionals File Your Trademark Today!” is one of TE's
24 advertising statements on Google. *See Exhibit A*. When a potential customer types “trademark
25 filing” in Google's search bar, the advertisement would appear at the second paid position in the
26 search result. *See Id.* The Google search pages presented in this exhibit were recorded on
27 December 24, 2017.

28 ¹ *See* Definition of “professional” by Merriam-Webster: <https://www.merriam-webster.com/dictionary/professional>.

16. In addition, since August 2016, Statement #1 has been appearing in at least 270 different advertisements purchased by TE on Google. A sample of these Google advertisements are shown in **Exhibit B**. For better illustration, some of the Google advertisements are shown below:



17. **Statement #2:** "Professional Preparation of your federal trademark application" is one of TE's promotional statements on its webpage <http://www.trademarkengine.com/pricing/trademark-registration-packages>. See below and **Exhibit C** at 2. This webpage compares different services provided by TE's different level of packages. As shown on the page, "professional preparation" of clients federal trademark application is provided by all three levels of service package. The pages presented in this exhibit were recorded on August 8, 2018.

→ www.trademarkengine.com/pricing/trademark-registration-packages

Our Guarantee My Account Contact Us

trademark engine Our Services Learning Center About Us FAQs Free Trademark Search

Choose a package.
All packages include lifetime customer support and our 100% satisfaction guarantee.

Basic Package
For just **\$99**
+ USPTO filing fees*
Get Started

Standard Package
For just **\$149**
+ USPTO filing fees*
Get Started

Deluxe Package
For just **\$199**
+ USPTO filing fees*
Get Started

Direct-Hit Search of the Federal USPTO database which will include misspellings for live and pending applications. ?	✓	✓	✓
Professional Preparation of your federal trademark application.	✓	✓	✓
Digitalization and Formatting of your trademark specimens and designs.	✓	✓	✓
Electronic Delivery of your trademark application with no need to wait for mail or dealing with paper files. This will qualify you the reduced government filing fee.	✓	✓	✓
Secure Online Account with calendar of important dates. Your status, documents, and important deadlines will be available to you 24/7 through your online account.	✓	✓	✓
Cease and Desist Letter A customized form that can be used if someone infringing on your mark. ?	—	✓	✓
Transfer and Assignment Letter If you need to sell or otherwise convey your mark.	—	—	—

18. Using the word “professional” in Statements #1 and #2 to represent the nature of TE’s trademark filing services is **literally false**.

19. No unlawful service can be called a “lawful” service. As such, using the word “lawful” to describe an unlawful service, *e.g.*, a service arranging fake-marriages to obtain green cards in violation of immigration laws, would be literally false. Likewise, no unlawful service can be called a “professional” service. Thus, using the word “professional” to describe the fake-marriage arranging service would be literally false. Therefore, it follows logically that

1 using the word “professional” to describe TE’s unlawful services, which are provided in
2 violation of federal and state laws, is also literally false. *See* Sections III and IV, *infra* (alleging
3 TE’s services are unlawful).

4 20. RAPC does not allege that the word “professional” is being used to represent that TE
5 has better experience or service quality than others, and because TE turns out to have less
6 experience or poor service quality, the word “professional” is false or misleading. The use of
7 “professional” in that sense would be merely an opinion or nonactionable puffery, as the Court
8 has pointed out.²

9 21. Instead, RAPC alleges that using the word “professional” to describe a service is a
10 guarantee of at least one thing—that the service is at least a lawful service—for no unlawful
11 service can be called a “professional” service. In this sense, “professional” becomes a statement
12 of fact with a guarantee that the service is lawful. When the service is in fact not lawful, as
13 RAPC alleges, using the word “professional” to represent the nature of that service is literally
14 false.

15 22. Using the word “professional” in Statements #1 and #2 to represent the nature of TE’s
16 trademark filing services is also **misleading**.

17 23. Using the word “professional” in these statements has actually misled or confused the
18 consuming public, including actual TE customers, into believing that TE provides at least
19 lawful services.

20 24. Out of the eighty (80) actual TE customers who were harmed by TE (*see Exhibit D*),
21 many of them were actually misled by TE’s use of the word “professional” into believing that
22 TE provides at least lawful services. These customers have agreed to serve as witnesses for
23 Plaintiffs. Some notable facts from these customers are listed below:

- 24 a. Customer #4 confirmed that he thought TE was providing a lawful service.
 - 25 b. Customer #8 “absolutely” believed that TE provides at least a lawful service.
- 26
27
28

² See Case No. 3:18-cv-00127-MMC, Dkt. 42 at pgs 7-8.

- 1 c. Customer #9 confirmed to Plaintiff's counsel that when she saw TE claiming on
2 their website that they are professionals, she "absolutely" believed they were
3 providing a lawful service.
- 4 d. Customer #11 "did assume [TE] were using professional and providing a lawful
5 service [sic] as per their website description."
- 6 e. Customers #13, #21, #27, #34, #40, #41, #44, #45 and #46 believed that TE were
7 providing a lawful service when they saw TE claiming on their website that they
8 are "professionals".
- 9 f. Customers #31, #32, #33, #35, #38, #39, #54, #56 and #58 confirmed to
10 Plaintiff's counsel that TE's advertising led them to believe that, among other
11 things, TE was at least providing a lawful service.

12 25. As RAPC alleges that TE's service is not lawful, *see* Sections III and IV, *infra*, using
13 Statements #1 and #2 to represent the nature of TE's service is misleading because the
14 statements have actually misled TE customers into believing that TE is at least providing a
15 lawful service.

16 **B. Statements about the privacy/identity protection program**

17 26. TE made the following upsell statements to paid customers of TE during the workflow
18 of filing their trademark applications:

- 19 a. **Statement #3:** "Protect your Identity - Identity Protection Program";
- 20 b. **Statement #4:** "With our Trademark Privacy Protection program, the public will see
21 our email and phone number rather than yours";
- 22 c. **Statement #5:** "Yes, I want to keep my information private (\$5/month) Highly
23 Recommended".

24 27. These statements appear in **Exhibit E** and are shown below for better illustration.

25

26

27

28

Trademark Engine, LLC [US] | https://www.trademarkengine.com/questionnaire/trademark-registration/privacy

Identity Protection Program

Have questions? Call 1 (877) 721-4579 or LIVE CHAT for real-time support.

97%

Protect Your Identity - Identity Protection Program

Everyone hates spam and sales calls. Do not give spammers your email and phone number. Trademark Engine will ensure that your personal phone number and email do not become part of the public record available to all through the USPTO online database. When you file your trademark, your email and phone number will be available for all to see. Spammers, solicitors and anyone else will then have access to your email and phone number. You will receive countless offers from lawyers, other online services and even people who will try to trick you into listing your trademark on their proprietary online database separate and apart from the official USPTO database where your mark will automatically be registered.

With our Trademark Privacy Protection program, the public will see our email and phone number rather than yours. You will still receive all of the official government notices from the USPTO to make sure you stay up to date with your status and any renewals. Letting the professionals at Trademark Engine serve as your Correspondence Agent helps you cut through the noise and avoid falling prey to spammers and scammers.

Would you like Trademark Engine to serve as your Correspondent to keep your information private?

☐ Yes, I want you to keep my information private (\$5/month) **Highly Recommended**

☐ No thank you

Your personal identifying information, such as your personal telephone number, email address and mailing address **will be visible publicly online**

Continue >

28. At least since August 2017, these statements have been shown to paid customers of TE in the upsell page towards the end of the trademark filing workflow, *e.g.*, at 97% completion as shown above. TE customers are encouraged to select “Yes, I want to keep my information private (\$5/month) Highly Recommended”. When TE customers select this service, they will be charged \$5 per month for the purported service of protecting their privacy.

29. Using Statements #3, #4 and #5 to represent the nature and quality of TE’s privacy/identity protection program is **literally false**.

30. The statements are literally false because, regardless of whether a customer purchased the \$5/month privacy protection program or not, TE always lists each of its customer’s contact information, including emails and phone numbers, on USPTO’s trademark application forms. As information of trademark applicant’s contact information is public on USPTO’s website, TE does not protect the privacy of its customers who purchased the privacy protection program.

31. The following customers of TE (listed in Exhibit D) actually purchased the privacy protection program by clicking “Yes, I want to keep my information private (\$5/month) Highly Recommended”:

- a. Customer #5 paid \$5 a month to protect his privacy and is still paying for that service.

- 1 b. Customers #7, #49, #56, #58 and #61 signed up for the privacy protection
2 program.
- 3 c. Customers #31, #32, #33 and #44 paid \$5 a month to protect their privacy. They
4 are upset that their private information has been published on USPTO public
5 forms.
- 6 d. Customer #47 called and confirmed to Plaintiff's counsel that he purchased the \$5
7 a month trademark privacy service from TE and feels victimized that his private
8 information has been published.

9 32. None of the above paid customers' privacy information were protected by TE. Their
10 information are publically available on USPTO's website. Thus, TE's upsell Statements #3, #4
11 and #5 are literally false.

12 33. Using Statements #3, #4 and #5 to represent the nature and quality of TE's
13 privacy/identity protection program is also *misleading*.

14 34. The TE customers listed above who purchased the privacy protection program were
15 actually misled by the statements. Clicking on Statement #5 on the upsell page (Exhibit E),
16 which also contains Statements #3 and #4, is the only way to purchase the program. No one
17 would spend \$5 per month on this program unless they were made to believe from the
18 statements that their privacy information would be protected by TE.

19 35. Furthermore, Customer #12 confirmed to Plaintiff's counsel that "I purchased the
20 privacy protection Service. I believed my information would be kept private." As clicking
21 through the upsell page is the only way to purchase the program, Customer #12, along with
22 other customers alleged above, were actually misled by these statements.

23 **II. Liability of Crabtree for TE's Lanham Act Violation**

24 36. Crabtree, as an officer of TE and a managing member of the LLC, authorized, directed
25 or participated in TE's Lanham Act violation alleged above. Therefore, Crabtree is liable for the
26 Lanham Act violation committed by TE.

27 37. Facts from the interview of a TE's ex-employee further demonstrates that Crabtree, as
28 the co-founder who started the business of TE, actively manages the daily operations of TE. *See*

1 **Exhibit F**, e.g., “[Crabtree]’s in the process of kind of branching off and doing his own thing ...
2 he started a web engine, called Trademark Engines...” *Id.* at 4:13; “At the time he started the
3 company...” *Id.* at 4:15; “[Crabtree] kind of let other people do [the common law searches]...”
4 *Id.* at 5:7; “before I submitted anything, it had to go to [Crabtree] first.” *Id.* at 7:6.

5 38. Thus, because advertising and promotion is key to a company’s operation, upon
6 information and belief, Crabtree authorized, directed or participated in the design and
7 advertising of the five false and misleading statements alleged above. As such, Crabtree is
8 personally liable for the Lanham Act violation committed by TE.

9 **III. The Unlawful Practices of TE**

10 **A. TE’s practice violates the unauthorized practice of law**

11 39. TE’s practice violates California and Texas state statutes which prohibit the
12 unauthorized practice of law. Cal Bus. & Prof. Code § 6125 provides that “[n]o person shall
13 practice law in California unless the person is an active member of the State Bar.” Under Texas
14 law, a person may not practice law unless the person is a member of the Texas state bar. Tex.
15 Gov’t Code § 81.102. Falsely holding oneself out as a lawyer with the intent to obtain an
16 economic benefit is a felony of the third degree. Tex. Pen. Code § 38.122.

17 40. The USPTO defines the practice of law to include the following³:

- 18 a. Consulting with or giving advice to an applicant or registrant in contemplation of
19 filing a trademark application or application-related document;
20 b. Preparing or prosecuting an application, response, post-registration maintenance
21 document, or other related document;
22 c. Advising applicants on proper responses to USPTO actions;
23 d. Conducting pre-filing searches for potentially conflicting trademarks;
24 e. Analyzing or pre-approving documents before filing; and
25
26

27 ³ See

28 <https://www.uspto.gov/trademark/trademark-updates-and-announcements/warning-unauthorized-lawpractice>; and
<https://www.uspto.gov/learning-and-resources/support-centers/trademark-assistance-center>.

1 f. Advising applicants on substantive examination issues, such as the acceptability
2 of specimens and classification of goods and services.

3 41. TE, a non-legal entity and a nonlawyer, unlawfully practices law by engaging in
4 following conducts: performing pre-filing trademark searches; creating and reviewing
5 trademark applications; making legal determinations about classification and other matters;
6 advising clients on problems with their applications including recommending changes to
7 classifications and descriptions of goods and services; and filing trademark applications on
8 clients' behalf.

9 42. The facts alleged below further demonstrates that TE has committed the unauthorized
10 practice of law as defined by USPTO.

11 **1. TE modifies client's original description and classification of trademark**

12 43. TE analyzes client's original description and classification of trademark which client
13 initially submitted to TE for review, advises client on how to modify the description and
14 classification, and pre-prove the trademark application before filing.

15 44. TE's practice is demonstrated by the following facts from a recent EVEREST CLAY
16 REALTORS trademark application submitted by Raj Abhyanker ("Abhyanker") via TE's
17 website:

- 18 a. In a chat session, a TE staff named Jake suggested a different class 36 and a
19 modified description of goods and services to Abhyanker.
- 20 b. In an email to Abhyanker on December 13, 2017, TE's staff modified the goods
21 and description of EVEREST CLAY REALTORS provided by Raj Abhyanker
22 from:

23 Everest Clay is a real estate brokerage in California that will also do
24 property management and create a website to help them find their real
25 house as well as find their own real estate investments. We will also
self manage my properties[.]

26 to:

27 Real estate brokerage; Real estate service, namely, rental property
28 management; Providing an internet website portal offering information
in the field of real estate concerning the purchase and sale of new and
resale homes and condos; Real estate investment services; Real estate

1 investment services in the nature of purchasing and selling of real
2 estate for others; Financial investment in the field of {real estate};
3 Real estate management services.

4 45. TE's practice is further demonstrated by the following facts from actual customers of TE
(listed in Exhibit D).

- 5 a. After Customer #7 submitted his/her original classification and description to TE,
6 TE emailed him/her to suggest a modified description and class that were
7 different from his/her original submission. TE's staff wrote the following in the
8 email:

9 The description of goods you provided is deficient and may create
10 delays or rejections by the USPTO because it is too general as it is
11 now. For example, a trademark application with a class description of
12 "Clothing" will be rejected by the USPTO for being too general. A
13 better description would be "Clothing, namely, pants, shirts, shorts,
14 and shoes." Likewise, you cannot simply state that you plan on selling
products in certain industry; you need to describe what kinds of
products.

15 *See Exhibit D at 3 ("Deficient Description of Goods").*

- 16 b. TE suggested Customer #19 to change the classification of his mark from class
17 003 to 035 and he agreed to the suggestion. But later he found out that his
18 trademark was in the wrong class.
- 19 c. TE amended or suggested amending the description and classification for
20 Customers #4, #5, #18, #26, #27, #31, #32, #33, #40, #41, #42, #44, #46, #48,
21 #56, #59, #60 and #61.
- 22 d. TE modified the original description submitted by Customer #37 but kept the
23 classification she originally selected.
- 24 e. Astonishingly, TE sent Customer #41 a detailed email on October 30, 2017 which
25 provides him with in-depth legal advice on the description of goods and services.
26 *See Exhibit D at 11 ("We Have a Question About Your Description of Goods or
27 Services").*
- 28 f. Customer #46 wrote to the Plaintiff's counsel that not only did TE assist him in
selecting classification and adjusting his goods and services, "[they] spent a

month trying to determine the classification.” *See Id.* at 13.

2. TE searches and advises potential conflicting trademarks

46. The following facts demonstrate that TE performs pre-filing searches for potential conflicting trademarks and advises clients of the conflict and possible solutions.

- a. During the EVEREST CLAY REALTORS trademark application process, TE prepared Abhyanker a search report of trademarks that may conflict with EVEREST CLAY REALTORS .
- b. Customer #37 was advised by TE that her trademark name was not in conflict with a construction company. *See* Exhibit D at 9.
- c. After pre-filing search for potentially conflicting trademarks, TE advised Customer #41 that “we have found an exact match for the mark you are attempting to trademark.” Exhibit D at 10 (“Direct-hit Located”). TE further advised him that “[j]ust because there is an exact match, it does not mean that you cannot also register your name if it is in a different category.” *Id.* at 10.

B. TE’s practice violates Article One of California State Constitution

47. Cal. Const., art. I, § 1 provides that “[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”

48. TE unilaterally waives client’s right to privacy when its staff, without clients’ knowledge, agreed to the following while submitting trademark applications for clients on USPTO’s website: (1) waiving clients’ rights to cancel the filing or refund the government fee; (2) waiving clients’ rights to privacy by allowing their names, phone numbers, emails and street addresses to be published publicly; and (3) permitting USPTO to make clients’ information available for public search on USPTO’s online databases and other online databases. *See Exhibit G.*

49. For better illustration, the USPTO’s trademark application submission form clearly states the following:

STEP 3: Read and check the following:

Important Notice:

(1) Once you submit this application, we will not cancel the filing or refund your fee. The fee is a processing fee, which we do not refund even if we cannot issue a registration after our substantive review. This is true regardless of how soon after submission you might attempt to request cancellation of the filing.

Therefore, please review ALL information carefully prior to transmission.

(2) All information you submit to the USPTO at any point in the application and/or registration process will become public record, including your name, phone number, e-mail address, and street address. By filing this application, you acknowledge that YOU HAVE NO RIGHT TO CONFIDENTIALITY in the information disclosed. The public will be able to view this information in the USPTO's on-line databases and through internet search engines and other on-line databases. This information will remain public even if the application is later abandoned or any resulting registration is surrendered, cancelled, or expired. To maintain confidentiality of banking or credit card information, only enter payment information in the secure portion of the site after validating your form. For any information that may be subject to copyright protection, by submitting it to the USPTO, the filer is representing that he or she has the authority to grant, and is granting, the USPTO permission to make the information available in its on-line database and in copies of the application or registration record.

(3) Be aware that private companies not associated with the USPTO often use trademark application and registration information from the USPTO's databases to mail or e-mail trademark-related solicitations (samples of non-USPTO solicitations included).

If you have read and understand the above notice, please check the box before you click on the Pay/Submit button.

50. TE Customers #2, #4, #5, #31, #32, #33, #34, #35, #39, #44, #45, #46, #47, #48, #49, #54, #56, #57, #60 and #61 stated that they were not aware or informed by TE that their rights to privacy would be waived by TE. *See* Exhibit D. Thus, TE's practice violates Article One of California State Constitution.

C. TE's practice violates 18 U.S.C. § 1001

51. *Third*, TE's practice violates 18 U.S.C. § 1001 which generally prohibits knowingly and willfully making false or fraudulent statements, or concealing information, in "any matter within the jurisdiction" of the United States. Violation of 18 U.S.C. 1001 carries a maximum

1 penalty of 5 years.⁴

2 52. A preliminary search of public data reveals that TE has been submitting or aiding and
3 abetting its customers in submitting fraudulent specimens to the USPTO.⁵ These fraudulent
4 specimens include fabricated proofs of use submitted to the USPTO on behalf of customers of
5 TE. *See Exhibit H*, Declaration Of Randall Hull In Support Of Plaintiff's Second Amended
6 Complaint.

7 **IV. The Unlawful Practices of Crabtree**

8 53. A lawyer can practice law by himself personally, or practice law in a law firm. But a
9 lawyer cannot practice law behind a non-legal corporation or LLC. As an officer and a
10 managing member of TE, a non-legal LLC, Crabtree personally violates Cal Bus. & Prof. Code
11 § 6125, Tex. Gov't Code § 81.102 and Tex. Pen. Code § 38.122 by aiding and abetting TE to
12 practice law.

13 54. Facts from the interview of the TE's ex-employee demonstrate that Crabtree covertly
14 practiced law behind the LLC. *See, e.g.*, the facts below.

- 15 a. The non-lawyer assistant "select[ed] the class that was close to or exactly" related
16 to the goods and services offered by the customer. Exhibit F at 5:14;
- 17 b. Mr. Crabtree "normally answered any type of Office Actions" from USPTO. *Id.*
18 at 5:19.
- 19 c. Before the non-lawyer assistant submitted anything to USPTO, "it had to go to
20 [Mr. Crabtree] first." *Id.* at 7:6.

21 55. Furthermore, as an officer and a managing member of TE who actively manages the
22 daily operations of TE, Crabtree either directly submitted or aided and abetted TE to submit
23 fake and fraudulent specimens to the USPTO, thereby violating 18 U.S.C. § 1001 himself
24 personally.

26 ⁴ *See also Nationstar Mortg. LLC v. Mujahid Ahmad*, 2014 TTAB LEXIS 350, *9 (Trademark
27 Trial & App. Bd. Sep. 30, 2014) ("Fraud in procuring a trademark registration occurs when an
28 applicant knowingly makes false, material representations of fact in connection with its
application with intent to deceive the USPTO.").

⁵ See the following fake specimens submitted by TE for its customers: [87819123](#), [87787183](#),
and [87817340](#).

1 56. Moreover, Crabtree, as a trademark practitioner before the USPTO, also violated the
2 following federal regulations:

- 3 a. Crabtree violated 37 C.F.R. § 11.104(a)(2) by failing to reasonably consult with
4 clients about the means by which the clients' objectives are to be accomplished
5 because TE customers' rights to privacy were waived without their knowledge.
- 6 b. Crabtree violated 37 C.F.R. § 11.503(b) by failing to make reasonable efforts to
7 ensure that the conduct of his non-practitioner assistants at TE (e.g., Jake) is
8 compatible with the professional obligations. Crabtree violated this federal
9 regulation because Jake and other non-practitioner assistants at TE have engaged
10 in the unauthorized practice of law.
- 11 c. Upon information and belief, Crabtree violated 37 C.F.R. §§ 11.107 and 11.109
12 by failing to check conflict of interest among his current and former clients prior
13 to retaining new clients for TE.
- 14 d. Upon information and belief, Crabtree violated 37 C.F.R. § 11.115(c) by failing to
15 deposit legal fees and expenses paid in advance by his customers into a client trust
16 account.

17 **V. RAPC's Lawful and Innovative Practice**

18 57. RAPC also offers trademark filing services for \$199 plus government filing fees through
19 LegalForce, Inc.'s Trademarkia.com website. Unlike TE, RAPC is a law firm.

20 58. Like TE, RAPC's \$199 service provides clients with legal advice and representation in
21 the prosecution of a trademark application. But unlike TE, RAPC's service is
22 attorney-supervised. An attorney is involved in all critical steps of the application process. A
23 licensed attorney personally signs off on each filing.

24 59. RAPC has accomplished its mission by innovating within the bounds of the regulations
25 governing the legal profession:

- 26 a. *Client/Matter Management Technology*. RAPC has developed its own platform
27 for client and matter management that automates many processes, detects and
28 corrects errors through artificial intelligence, streamlines the work flow, and

1 focuses attorney attention on only attorney tasks. USPTO uses similar but perhaps
2 even less advanced technology to manage its process.

3 b. *Volume*. With over 400 new trademark clients a month, RAPC attorneys spend all
4 of their time doing the same types of tasks--which not only develops their
5 expertise, but makes them more efficient. Five of the top ten most successful
6 filers ranked by the 2017 World Trademark Review industry publication are
7 RAPC attorneys.

8 c. *Bifurcated Supply Chain Management*. RAPC applied best manufacturing
9 practices to legal services by taking all non-attorney work off of attorneys' plates
10 and globalizing it to improve quality while reducing costs.

11 d. *Training*. RAPC attorneys undergo a three-month intensive training process
12 modeled after the USPTO examiner training program to ensure they are proficient
13 and efficient trademark attorneys.

14 **VI. The Unfair Competition By TE and Crabtree**

15 60. As explained above, RAPC provides superior technology, is more innovative, and
16 provides more qualified, higher quality services than TE at the same price. But it is losing the
17 battle because it is being fought on uneven playing field: RAPC and its attorneys are bound by
18 the rules of conduct governing the legal profession. TE has eschewed those rules by thus far
19 operating outside of the existing regulatory framework. Many of those rules protect consumers:
20 they ensure competence and loyalty and provide remedies when those duties are violated.

21 61. TE purports to operate outside those duties and disclaims them in its terms of use and
22 other fine-print disclaimers on its site. Consumers are worse off because they don't get the
23 protections they expect from the legal profession. For example, the following are statements on
24 TE:

25 a. Our customer service representatives cannot answer legal questions and
26 because we do not have an attorney-client relationship, any
27 communications with our customer service representatives are not
28 privileged and you should not share confidential information with them.

- b. At no time do we review your answers for legal sufficiency, draw legal conclusions, provide legal advice, opinions or recommendations about your legal rights, remedies, defenses, options, selection of forms, or strategies, or apply the law to the facts of your particular situation.
- c. TE is not a "lawyer referral service" and does not provide legal advice or participate in any legal representation. Use of TE is subject to our Terms of Service and Privacy Policy.
- d. We are not a substitute for an attorney and we cannot provide you any legal advice.

62. Terms require the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions, and also limit the remedies available to in the event of a dispute. By renouncing the attorney-client relationship and purporting to provide legal help by professionals rather than legal advice, TE achieves two business advantages at the expense of consumers: (1) sidestepping professional responsibilities governing the legal profession and (2) avoiding liability.

63. In short, TE touts its experience and expertise in helping people with legal problems. But in the fine print, TE seeks to avoid the responsibilities of law practice by characterizing its services as self-help and maintaining that the website cannot substitute for an attorney, regardless of the contrary assumptions of consumers that are reinforced by TE's promotional statements. Despite this, if taken at face value, TE's disclaimer and terms of use allow it to operate free from the confines of ethical rules enforceable upon attorneys while denying consumers redress that they would otherwise have for the faulty legal advice it provides.

64. TE's false and misleading promotional statements deceive consumers into purchasing inferior services, but its success in exploiting advantages by not operating as a law firm -- despite surreptitiously practicing law -- have also given it a broader competitive advantage:

- a. TE professionals are cheaper labor: they make about \$14 an hour, when compared with a \$67,000 median starting salary for a licensed attorney at a law firm with fewer than 25 employees (larger firms have even higher starting salaries)

1 including at RAPC.

- 2 b. TE does not expend time or money on conflict checks, does not forego clients
3 with conflicts, and as a result and can simultaneously assist direct competitors and
4 adversaries in litigation from filing trademarks for the same or confusingly similar
5 trademarks at any time.
- 6 c. TE does not have the limitations, expense, and administrative burden of trust
7 accounts, reporting, continuing legal education, bar fees, malpractice insurance,
8 and other regulatory burdens imposed on lawyers and law firms. As a result, they
9 are able to better regulate their cash flow cycles to meet short term expenses by
10 not having client funds for trademark filings for which work has not started
11 locked away in an IOLTA trust account.
- 12 d. TE does not have the limitations, expense, and administrative burden of ethics
13 compliance audits, regular consultation with outside ethics counsel, and vigilant
14 adherence to rules governing lawyers.
- 15 e. TE does not have the limitations of not splitting legal service fees for trademark
16 filings and prosecution with non-attorneys, giving them new ways of hiring and
17 incentivizing non-lawyer staff through commissions, bonuses, and incentives for
18 the sale of U.S. trademark filing and prosecution services by customers of TE, and
19 such incentives cannot be offered by lawyers and law firms including RAPC.
- 20 f. TE does not have the limitations, expense, and administrative burden of
21 supervising non-attorney work using licensed lawyers. As a result, its legal staff
22 are able to have unregulated reign on counseling customers on U.S. trademark
23 filing and prosecution matters without oversight by a regulated professional.
- 24 g. TE do not face the expense and burden of responding to regulatory inquiries,
25 requests for information, and investigations from the Bar and USPTO's OED
26 (even where no action has ultimately been taken), or face exclusion and reciprocal
27 discipline.
- 28 h. TE are not disciplined for incentivizing its non-attorney employees such as

1 Lubbat through ownership in an entity that directly gains revenue from U.S.
2 trademark filing. By subverting the restriction on non-lawyer ownership of law
3 firms, TE are able to provide non-attorney employees with stock option and
4 Restricted stock units (RSUs) incentives for employees. Such incentives are
5 unavailable to lawyers and law firms including RAPC making it difficult for it to
6 compete for talented non-attorney labor.

- 7 i. Institutional investors are able to purchase equity in TE giving the company
8 capital required to grow and invest in capital assets at a rate faster than RAPC,
9 making it difficult to compete.
- 10 j. TE disclaim responsibility for the consequences of the professional legal help it
11 gives, while lawyers must maintain malpractice insurance and exercise caution
12 and diligence to avoid even the appearance of impropriety or incompetence that
13 could lead to a malpractice action or a bar/OED investigation.

14 65. It is thus important that TE is enjoined and held accountable for its false and
15 misleading promotions and unfair competitions as described herein.

16 66. As a result of Defendants' false and misleading advertisement and unfair competition,
17 RAPC has suffered lost revenue, loss of market share, reduced asset value, diverted sales to TE,
18 and increased advertising costs.

19 67. RAPC has lost revenue in two ways: First, TE's false advertising and unfair competition
20 have caused consumers to purchase TE's services instead of RAPC's services. Second, TE's
21 operation outside the law firm regulatory framework has allowed it to raise capital that RAPC
22 cannot. As a result, RAPC lost significant competitive bidding opportunities on approximately
23 \$1.4 million dollars of advertising spend in the year 2017 alone to TE. RAPC has reduced its
24 trademark legal service prices from \$499 to \$199 and sometimes even \$69 to match the unfair
25 competition of TE.

26 68. But for TE's conduct of false advertising and unfair competition, a good percentage of
27 consumers likely would have purchased RAPC's trademark filing services, not TE's. In total,
28 RAPC's lost sales and opportunities exceeding \$3,000,000 dollars based on the lifetime value

1 per customer.

2 69. RAPC has also lost asset value. It has seen its market share decline from nearly 2.4% of
3 all U.S. trademarks filed in the United States in 2015 to approximately 1.8% in 2017. As a
4 consequence of TE' unfair competition, RAPC has lost market share of approximately 0.6% of
5 the overall trademark market since 2015 (approximately 2670 trademarks filings per year) in the
6 relevant market for U.S. trademark filing and prosecution, upon information and belief.
7 Tellingly, RAPC ceased making the INC5000 list of the fastest growing companies in America
8 in 2015 after four consecutive years of making the list. See
9 <https://www.inc.com/profile/legalforce-rapc>. The value of RAPC's business has been directly
10 reduced and negotiations with potential acquirers have stalled.

11 70. Moreover, upon information and belief, RAPC's advertising costs have increased.
12 RAPC's cost per click and total advertising attract trademark clients has gone up by
13 approximately 10% as a direct consequence of TE' unfair competition. In addition, as a direct
14 consequence of TE' wrongful acts, upon information and belief, RAPC has reduced their
15 attorney led service prices from \$499 to \$199 and sometimes lower to match the unfair
16 competition from TE.

17 71. Defendants' conduct of false and misleading advertising and unfair competition
18 proximately caused RAPC's injury. Defendants, along with about a dozen other unauthorized
19 trademark online filers, advertise through Google and other online marketplaces where RAPC
20 also advertises. They purchase the same or similar advertising keywords which RAPC also
21 purchases. If Defendants do not engage in the alleged conduct, e.g., unauthorized practice of
22 law, in the advertisement they would have to significantly limit the scope of their service to the
23 point which there is not much value-added service. They can simply fill out forms and but
24 cannot provide any filing related legal advice to customers, such as suggesting and modifying
25 descriptions and classifications. Because RAPC provides full-scale trademark legal service and
26 so advertises in its ads, potential trademark service customers, comparing the advertisement of
27 both RAPC and Defendants, would have chosen RAPC instead of Defendants. Therefore,
28 Defendants take away potential sales from RAPC and proximately caused injury to RAPC.

72. In addition to the theory of proximate causation alleged above, Defendants' conduct also proximately caused RAPC's injury on alternative theories of causation. "If a plaintiff can prove that an entire industry was tortious, the doctrine of enterprise liability shifts the burden to members of that industry to prove that they did not [] caused the injury." *Barron v. Martin-Marietta Corp.*, 868 F. Supp. 1203, 1208 (N.D. Cal. Nov. 2, 1994) (citation omitted). Moreover, "[u]nder the doctrine of market share liability, where it is impossible for the plaintiff to prove which member of the market was responsible for the injury, each member of the market is responsible for a percentage of the recovery matching its share of the market." *Id.* (citation omitted).

VII. Substantial Consumer Harm

73. TE and Crabtree have caused substantial harm to consumers because of their unfair competition and unlawful practices. Listed in **Exhibit D** is a small sample of TE customers (full names, serial numbers, and contact information can be submitted under seal and have already been provided to Defendants counsel prior to the filing of this SAC) who have been misled by Defendants' advertising and/or harmed by Defendants' unlawful and unfair practices. All have agreed to be witnesses for Plaintiff.

FIRST CLAIM FOR RELIEF **DECLARATORY JUDGMENT** (Against TE and DOES 1-50)

74. RAPC repeats each and every allegations contained in the paragraphs above and incorporate by reference each preceding paragraph as though fully set forth herein.

75. An actual controversy has arisen and now exists between RAPC and TE regarding TE's false advertising and unfair business practices, which necessarily requires a foundational determination as to whether TE has engaged in the unauthorized practice of law.

76. RAPC's injury is fairly traceable to TE's conduct of unauthorized practice of law. Because TE, as a nonlawyer, unlawfully practices law, TE can perform all the legal services that a trademark law firm such as RAPC can perform, but at a price and business expense much lower than a law firm. Therefore, TE unfairly competes with RAPC and causes RAPC's injury.

77. RAPC's injury will be redressed by the Court's declaration addressing the question of

1 whether TE is engaged in the unauthorized practice of law. If the answer to this question is
2 affirmative, then TE can no longer provide trademark related legal services and RAPC will be
3 able to redress its injuries and fairly compete with TE.

4 78. Wherefore, RAPC seeks a declaration from this Court that TE's trademark filing
5 services, specially the practices and facts alleged in Section III.A, violate Cal Bus. & Prof. Code
6 § 6125, Tex. Gov't Code § 81.102 or Tex. Pen. Code § 38.122.

7 **SECOND CLAIM FOR RELIEF**
8 **FALSE OR MISLEADING ADVERTISING**
9 **THE LANHAM ACT, 15 U.S.C. § 1125(a)**
(Against TE, Crabtree and DOES 1-50)

10 79. RAPC repeats each and every allegations contained in the paragraphs above and
11 incorporate by reference each preceding paragraph as though fully set forth herein.

12 80. TE violated 15 U.S.C. § 1125(a) by making false and misleading advertising Statements
13 #1 to #5 as alleged *supra* in Sections I.

14 81. Crabtree violated 15 U.S.C. § 1125(a) because he is personally liable as alleged *supra* in
15 Sections II.

16 82. Statements #1 to #5 are commercial advertisements or promotions because:

- 17 a. They were designed to promote the services of TE;
18 b. They propose commercial transactions, including but not limited to the purchase
19 of TE's \$69 "basic package" trademark filing service. *See* Exhibit B;
20 c. They promote TE' commercial activities;
21 d. They were motivated by TE' economic interests; and
22 e. The statements were sufficiently disseminated to the relevant purchasing public,
23 namely consumers seeking trademark protection assistance.

24 83. The statements were made in connection with services offered by TE. The statements
25 relate to descriptions or representations of fact that misrepresent the nature, characteristics, and
26 quality of TE's services.

27 84. Defendants' false or misleading advertisements have caused and, unless enjoined, will
28 continue to cause immediate and irreparable harm to RAPC's for which there is no adequate

1 remedy at law. In addition, as a result of Defendants' false advertisements, RAPC has been
2 injured, including but not limited to, lost customers, direct diversion of sales from RAPC to
3 Defendants, decline in sales and market share, lost profits, having to pay increased advertising
4 costs, loss of goodwill, and additional losses and damages. Furthermore, Defendants have been
5 unjustly enriched at the expense of RAPC as a consequence of Defendants' false and misleading
6 advertising. Accordingly, RAPC is entitled to injunctive relief and to recover up to three times
7 the damages sustained by RAPC, as well as Defendants' profits, and reasonable attorney fees
8 under 15 U.S.C. §§ 1114, 1116, and 1117.

9 **THIRD CLAIM FOR RELIEF**
10 **CALIFORNIA UNFAIR COMPETITION**
11 **CAL. BUS. & PROF. CODE § 17200 ET SEQ.**
12 **(Against TE, Crabtree and DOES 1-50)**

13 85. RAPC repeats each and every allegations contained in the paragraphs above and
14 incorporate by reference each preceding paragraph as though fully set forth herein.

15 86. RAPC has standing to sue because it has suffered injury in fact and lost money,
16 including diverted sales to Defendants, lost revenue, loss of market share, reduced asset value,
17 and increased advertising costs.

18 87. TE violated the unlawful prong of UCL because of the following reasons:

- 19 a. TE violated Cal Bus. & Prof. Code § 6125, Tex. Gov't Code § 81.102 and Tex.
20 Pen. Code § 38.122 as alleged *supra* in Section III.A.
- 21 b. TE violated Cal. Const., art. I, § 1 as alleged *supra* in Section III.B.
- 22 c. TE violated 18 U.S.C. § 1001 as alleged *supra* in Section III.C.

23 88. Crabtree violated the unlawful prong of UCL because of the following reasons:

- 24 a. Crabtree violated Cal Bus. & Prof. Code § 6125, Tex. Gov't Code § 81.102 and
25 Tex. Pen. Code § 38.122 as alleged *supra* in Section IV.
- 26 b. Crabtree violated 18 U.S.C. § 1001 as alleged *supra*.
- 27 c. Crabtree violated the following federal regulations as alleged *supra*: 37 C.F.R. §
28 11.104(a)(2), 37 C.F.R. § 11.503(b), 37 C.F.R. §§ 11.107 and 11.109, and 37
C.F.R. § 11.115(c).

1 89. TE and Crabtree have violated the unfair prong of UCL because of the following
2 reasons:

- 3 a. The consumer injury caused by submitting fraudulent specimens to the USPTO
4 and violations of unauthorized practice of law and various other state and federal
5 statutes is substantial. Consumers become susceptible to the risk of bad legal
6 advice dispensed by unlicensed, un-trained, and uninformed non-lawyers. Public
7 interest is greatly harmed. *See supra* Section VII “Substantial Consumer Harm”.
- 8 b. Unauthorized practice of law and submitting fraudulent specimens to the USPTO
9 offer no countervailing benefits to consumers or competition.
- 10 c. Consumers themselves cannot reasonably have avoided the injury because a
11 reasonable consumer (1) is not familiar with the trademark filing process and does
12 not understand what constitutes the practice of law in the process; and (2) does
13 not understand that unauthorized practice of law is a crime under California and
14 Texas laws.
- 15 d. It is unfair to the competition for trademark filing related services generally if
16 Defendants are able to offer trademark filing services unlawfully by violating
17 state and federal laws and regulations, while the vast majority of attorneys
18 practicing before the USPTO abide by the laws and regulations.

19 90. RAPC is informed and believe that TE, as a competitor to RAPC, performed the acts
20 alleged herein for the purpose of injuring RAPC and competition generally. The acts alleged
21 herein continue to this day and present a threat to RAPC, the general public, the trade and
22 consumers.

23 91. As a result of TE and Crabtree’s wrongful acts, RAPC has suffered and will continue to
24 suffer loss of millions of dollars of income, profits and valuable business opportunities and if
25 not preliminarily or permanently enjoined, Defendants will have unfairly derived and will
26 continue to derive income, profits and business opportunities as a result of its wrongful acts.

1 92. RAPC seeks an order of this Court under California Business & Professions Code
2 §17200 *et seq.* that preliminarily and permanently enjoins TE and Crabtree from continuing to
3 engage in the unlawful and unfair acts or practices set forth herein, as well as restitution.

4 **REQUEST FOR RELIEF**

5 WHEREFORE, RAPC requests relief as follows:

6 93. Declare that TE is engaged in the unauthorized practice of law while providing
7 trademark related services to its clients;

8 94. Enter judgment against TE and Crabtree;

9 95. Award RAPC all available damages including restitutionary damages against TE and
10 Crabtree in an amount to be proven at trial;

11 96. Award RAPC its costs and expenses of this action against TE and Crabtree, including
12 RAPC's reasonable attorney fees necessarily incurred in bringing and pressing this case, as
13 provided in 15 U.S.C. § 1117(a);

14 97. Award RAPC pre- and post-judgment interest at the applicable rates on all amounts
15 awarded;

16 98. Grant permanent injunctive relief to prevent the recurrence of the violations for which
17 redress is sought in this complaint;

18 99. Order any other such relief as the Court deems appropriate.

19
20 Respectfully submitted this Friday August 10, 2018.

21
22 LEGALFORCE RAPC WORLDWIDE P.C.

23
24 /s/ Raj V. Abhyanker
25 Raj V. Abhyanker
26 California State Bar No. 233,284
27 Attorney for Plaintiff:
28 LegalForce RAPC Worldwide, P.C.

JURY TRIAL DEMANDED

Plaintiff hereby request a bench trial for the declaratory relief and jury trial for all other causes of action alleged in this Second Amended Complaint.

Respectfully submitted this Friday August 10, 2018.

LEGALFORCE RAPC WORLDWIDE P.C.

By /s/ Raj V. Abhyanker
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